

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 06018**, a proposed text amendment to Title 27 of the Lincoln Municipal Code, requested by Charles D. Humble on behalf of Mike and Lynn Price, by amending Sections 27.07.040, and adding new Section 27.03.631 and new Section 27.63.770, to define "Tree Service", and to create a special permit provision in the AG Agricultural District to allow the location of a tree service business on land located in the AG Agricultural District under certain conditions.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 04/12/06
Administrative Action: 04/12/06

RECOMMENDATION: Approval, as revised 6-3 (Strand, Sunderman, Larson, Carroll, Krieser and Carlson voting 'yes'; Cornelius, Taylor and Esseks voting 'no').

STAFF RECOMMENDATION: Approval, as revised.

FINDINGS OF FACT:

1. This is a request to add new language to define and allow "Tree Services" as a special permitted use in the AG district.
2. The staff recommendation on the text amendment as originally proposed is based upon the "Analysis" as set forth on p.2-3, concluding that the amendment would be a big step in allowing additional commercial business operations outside the City and in the rural areas. This is not in conformance with the intent of the Comprehensive Plan.
3. On April 10, 2006, the applicant submitted a revised application, deleting subparagraph c) of new Section 27.63.770, which eliminates the opportunity to locate a tree service on a minimum lot area of 20 acres in the AG district. Thus, the tree service special permit would only be allowed where a prior commercial/industrial use special permit has existed, which would continue an existing land use activity and not be a new shift to the non-urban area.
4. With this revision, the staff revised its recommendation to approval.
5. The applicant's testimony is found on p.6-7 and 8, indicating that the applicant has entered into a contract to purchase a new location and has applied for a special permit according to this text amendment.
6. Testimony in opposition to the operation of the tree service at its existing location is found on p.7.
7. On April 12, 2006, the majority of the Planning Commission agreed with the revised staff recommendation and voted 6-3 to recommend approval of the revised application (Cornelius, Taylor and Esseks dissenting, finding that such special permitted use should be located in an urban industrial area). See Minutes, p.8.

FACTSHEET PREPARED BY: Jean L. Walker

REVIEWED BY: _____

REFERENCE NUMBER: FS\CC\2006\CZ.06018

DATE: April 17, 2006

DATE: April 17, 2006

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for April 12, 2006 PLANNING COMMISSION MEETING

****As Revised by the Applicant and Recommended for Approval by
Planning Commission: April 12, 2006****

PROJECT #: Change of Zone No.06018

PROPOSAL: Amend section 27.03 Definitions, 27.07 AG District and 27.63 Special Permits, in the Lincoln Municipal Code to add "Tree Service" as a Special Permitted Use.

CONCLUSION: As proposed, this amendment is a big step in allowing additional commercial business operations outside the City, in the rural areas. We do not find this in conformance with the intent of the comprehensive plan.

<u>RECOMMENDATION:</u>	Denial <u>**Revised to approval with the deletion of subparagraph c) under new Section 27.63.770**</u>
-------------------------------	---

ANALYSIS:

1. This is a request to add new language to Section 27.03-definitions, 27.07 AG District and 27.63 Special Permits, of the Lincoln Municipal Code to allow "Tree Services" as a special permitted use.
2. The text change would define "Tree Services" and allow them as a special permit in the AG district.
3. The Comprehensive Plan notes the following language which may be relevant (underline added for emphasis).

ECONOMIC OPPORTUNITY

Existing businesses flourish and there are opportunities for new businesses within Lincoln and the incorporated communities.

The Plan provides new employment locations and supports retention of existing businesses. Residential, commercial, and industrial development take place in the City of Lincoln and within incorporated towns. This ensures that there are convenient jobs and a healthy tax base within the communities to support the public safety, infrastructure and services within the community. While location in the cities and towns of the county is a priority, unique site requirements of a business may necessitate consideration of other suitable and appropriate locations in the county.

The community has adapted and thrived in an ever changing world economy. A strong information technology infrastructure exists to support business growth and the community's information demands. New technologies have led to new modes of living and working. A skilled workforce continues to adapt to economic and cultural changes. Pg F 16

Agricultural: Land principally in use for agricultural production. Agricultural land may be in transition to more diversified agribusiness ventures such as growing and marketing of products (e.g., horticulture, silvaculture,

GENERAL PRINCIPLES FOR ALL COMMERCIAL & INDUSTRIAL USES

Commercial and industrial districts in Lancaster County shall be located:

- within the City of Lincoln or incorporated villages
- outside of saline wetlands, signature habitat areas, native prairie and floodplain areas (except for areas of existing commercial and industrial zoning)
- where urban services and infrastructure are available or planned for in the near term
- in sites supported by adequate road capacity – commercial development should be linked to the implementation of the transportation plan
- in areas compatible with existing or planned residential uses
- in areas accessible by various modes of transportation (i.e. automobile, transit and pedestrian)
- so that they enhance entryways or public way corridors, when developing adjacent to these corridors
- in a manner that supports the creation and maintenance of green space as indicated in the environmental resources section of this Plan.

Pg F 38

4. In reviewing this application, staff found no substantive difference between this operation and that of a typical contractors yard/operation. Although trees are organic material, the contractors tree removal, trimming and land clearing operations are primarily in Lincoln. Thus no special treatment is warranted to provide new locations in the AG district outside of the Cities and towns of the county.
5. There is land available in the incorporated and unincorporated areas that is currently zoned to accommodate this type of use (This would typically require Industrial zoning).
6. Agricultural operations can have similar impacts on acreage owners as construction contractor operations. But farming in rural areas is given special protection and recognition by state and local laws and policies, and homeowner moving onto acreage lots in rural areas should expect those impacts. Recent feuds over motorcycle racing in rural areas suggests that acreage owners would be very sensitive to the introduction of contractor type businesses. These owners, as well as farmers with expectations of selling some or all their land for acreage lots someday, deserve better notice and an opportunity to participate in public land use policy discussions as part of the Comprehensive Plan update process.
7. If this proposed text change could be amended to apply only where a prior commercial/industrial use special permit has existed, staff would support the amendment, as it would continue an existing land use activity and not be a new shift to the non-urban area.
8. Following is the proposed text, as provided by the applicant:

TEXT AMENDMENTS TO LINCOLN MUNICIPAL CODE

Amend Section 27.07.040 of the LMC to add a new subparagraph to read as follows:

(z) Tree service.

Amend Chapter 27.03 of the LMC to add a new section to read as follows:

27.03.631 Tree Service.

Tree service shall mean a building or premises used primarily in support of a business engaged in tree and stump removal, tree and shrub trimming, stump grinding, pin oak injection, insect and disease control, tree nutrients, processing wood chips and firewood, land clearing, the premises may be used for the processing, and storage of tree related products and byproducts produced only by the business located on the premises and the parking of trucks, grinders and related equipment, but no retail sales of products shall be allowed on the premises.

Amend Chapter 27.63 of the LMC to add a new section to read as follows:

27.63.770 Permitted Special Use: Tree Service.

Tree service may be allowed by Special Permit in the AG zoning district under the following conditions:

- (a) Residential uses occupied by owner/caretaker shall be permitted.
- (b) Where a prior special permit has been approved on an undersized lot, the lot may be used for this special permit.
- ~~(c)~~ ~~On a minimum lot area of twenty acres so long as such use complies with the height, setback and area regulations of the AG district.~~ **(**Per Planning Commission, as revised by the Applicant and agreed upon by staff, with staff changing the recommendation to approval, 4/12/06**)**
- (~~d~~c) The City Council may require screening or buffering from adjacent uses.

Prepared By:

Mike DeKalb
441-6370, mdekalb@lincoln.ne.gov
Planner
March 23, 2006

APPLICANT: Mike and Lynn Price
24056 S. 148th St.
Filly, NE 68357
(402) 488-8007

CONTACT: Charles D. Humble
301 S. 13th Street
Lincoln, NE 68508
(402) 441-7491

CHANGE OF ZONE NO. 06018

PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 12, 2006

Members present: Strand, Sunderman, Larson, Carroll, Krieser, Cornelius, Taylor, Esseks and Carlson.

Staff recommendation: Denial.

Ex Parte Communications: None.

The Clerk announced that the applicant has submitted a revised application, deleting subparagraph c) from proposed new Section 27.63.770 as follows:

~~c) — On a minimum lot area of twenty acres so long as such use complies with the height, setback and area regulations of the AG district.~~

Proponents:

1. Charlie Humble, 301 S. 13th Street, presented the proposal on behalf of Mike and Lynn Price, who currently operate a tree service on South 14th Street, and, innocently enough, ran afoul of the regulations of the AG district, receiving a notice from Building & Safety. Due to this violation, the applicants have been diligently searching for a new location containing approximately 10 acres, which, in most cases, puts them into industrial zoned sites for their business and they were unable to find a new location.

The applicants met with the staff and explained the tree service business. They need about 10 acres of land; there would be buildings for their equipment and trucks; the employees come to the site, pick up the trucks and equipment from the buildings and then go out and do the tree service business off-site, returning afterwards to return and store the equipment overnight. They need land to store some wood. There is no activity performed on-site. About twice a year, they will employ a tub grinder to grind up the materials that are stored, but under the code they have to meet the noise ordinance.

Humble further advised that in working with staff, the staff indicated that it would be a good idea and acceptable if the applicants would basically transition an existing site, and that was their original intent. Subparagraph c) under the new section 27.63.770 was included as a “fudge factor” in case his clients could not find such a site. That language would potentially open up other areas in the AG zoning for potential business. Then Humble advised that the applicants subsequently found an 11-acre site that is presently the subject of a special permit for nursery purposes. It works very well and they will transition it to a very similar use. Therefore, Humble revised the application to remove subparagraph c). He believes this will change the staff recommendation to approval.

Humble also advised that the owners would like very much to be able to live on the premises as the caretaker and therefore would have more control over the premises. There will be no retail sales on the premises. The City Council may require additional screening or buffering. The text

amendment provides the opportunity to apply for a special permit. Humble believes this text amendment falls within the economic opportunity provision of the Comprehensive Plan, which indicates that unique site requirements of a business may necessitate consideration of other suitable and appropriate locations in the county. By revising the application to eliminate subparagraph c), it deletes the potential expansion of business in the AG district.

Mike DeKalb of Planning staff agreed that the staff recommendation changes to approval with the elimination of subparagraph c).

Opposition

1. Thomas Burns, 10955 S. 14th Street, testified in opposition to the existing location of the tree service, which is behind his house on S. 14th Street. There is noise from the trucks starting up in the mornings. He does not like the idea of stumps being piled up to be ground down twice a year. He submitted photographs of what the tree service looks like from the back of his property, showing wood within 30' of his property; the trucks are not stored in buildings; it is not aesthetically pleasing for Hwy 77 traffic; and he already has a problem with water coming down off of Hwy 77. He does not want this business to be allowed to continue at its current location. He is concerned about the mulch and mud washing down onto his land.

Staff questions

Carroll noted that the new location has a nursery special permit. He asked how a nursery special permit would be different than the proposed tree service special permit. DeKalb suggested that it is sort of a matter of degree in a continuum of things. He would not expect a nursery to be grinding up trees. There would be no retail sales on-site.

Carroll does not understand why this is necessary if they have found a site with a nursery special permit. DeKalb stated that the tree service operation would not fit under the definition of a nursery today. The staff had taken the position that the tree service might be considered a contractors yard with dump trucks, etc., more of a business characteristic. DeKalb further explained that the applicants have received a zoning violation citation at their current location so they are looking for a new site. This text amendment was to provide them the opportunity to locate by special permit and staff is taking the position of supporting a location in a prior commercial area. DeKalb also noted that the applicants have applied for a special permit for an existing area on South 68th Street.

Carroll clarified that the proposed text provides that the new site must be an existing commercial use. DeKalb concurred.

Esseks observed that, in all fairness to the surrounding property owners, the replacement commercial use should be no more intolerable or unpleasant than the existing use. He also observed that the text amendment would allow tree services throughout the county. He does not believe this is an agricultural enterprise. He suggested that the county should try to find a place for businesses like this. Are there alternative options? DeKalb's response was that the staff believes that this type of business fits more into a contractors yard circumstance.

DeKalb also reiterated that the applicants have submitted an application for a special permit for a tree service at a different location, based on approval of this text amendment. That application is

scheduled on the April 26th Planning Commission agenda.

Response by the Applicant

Humble clarified that the site which the applicants have under contract is five miles east of their current location.

Mike Price, the applicant, responded to the pictures shown by the opposition. He explained that he is currently renting that property. Knowing that they are going to be leaving that site, they have not ground up the materials because it will be easier to move them first. He also stated that they want to have their residence at the new location so they will keep it cleaned up and looking nice.

Taylor inquired about commercial uses on the site. Price clarified that he does not sell products on the site. All of the mulch, fire wood, etc., is loaded up and hauled out. They do not allow the public to come in and buy anything.

Humble pointed out that the text amendment specifically prohibits retail sales on site.

Larson inquired as to how soon the applicant would move to the new site if this is approved. Price indicated that he is hoping to be moved by the end of June. He will clean up the current site.

ACTION BY PLANNING COMMISSION:

April 12, 2006

Strand moved approval, as revised by the applicant, seconded by Larson.

Esseks stated that he will vote against this because he believes that the tree service industry is just not at all like agricultural enterprises that you find in AG areas. The amount of nuisance effect is so much greater that it belongs in an urban industrial area.

Carlson indicated that he is sympathetic to Mr. Esseks' argument. But the special permit provision provides the opportunity to determine whether it is a good exchange. That may give him enough comfort to support the motion.

Taylor agreed with Esseks. It appears that we are setting a precedent by creating this text amendment.

Motion for approval, as revised, carried 6-3: Strand, Sunderman, Larson, Carroll, Krieser and Carlson voting 'yes'; Cornelius, Taylor and Esseks voting 'no'. This is a recommendation to the City Council.

LAW OFFICES

ERICKSON & SEDERSTROM, P.C.

A LIMITED LIABILITY ORGANIZATION

SUITE 400

301 SOUTH 13TH STREET

LINCOLN, NEBRASKA 68508-2571

TELEPHONE (402) 476-1000

FACSIMILE (402) 476-6167

WRITER'S INTERNET ADDRESS

humble@eslaw.com

April 10, 2006

CHARLES THONE
DONALD H. ERICKSON
WM. E. MORROW, JR.
DANIEL B. KINNAMON
THOMAS J. GUILFOYLE
VIRGIL K. JOHNSON
CHARLES V. SEDERSTROM
CHARLES D. HUMBLE
ALAN M. WOOD
WILLIAM F. AUSTIN
JOHN C. BROWNRIGG
THOMAS J. CULHANE
RICHARD J. GILLOON
SAMUEL B. CLARK
GARY L. HOFFMAN
MARK M. SCHORR
JERALD L. RAUTERKUS
WILLIAM T. FOLEY
PATRICK R. GUINAN

JOHN B. MORROW
MICHELLE B. MILLER
TIERNAN T. SIEMS
JASON R. YUNGUM
PAUL D. HEIMANN
MATTHEW V. RUSCH
KRISTINE J. GATES
ANGELA PROBASCO
TRENT J. MARTINET
NICOLE M. LUCIUS
JOVAN W. LAUSTERER
BRADLEY B. MALLBERG

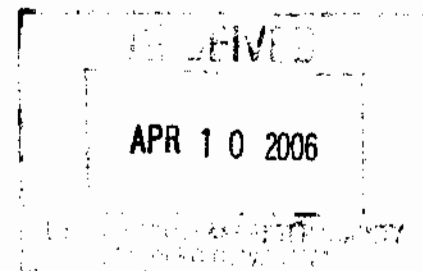
OF COUNSEL

DAVID J. NIELSEN
DONALD B. STENBERG

OMAHA OFFICE
10330 REGENCY PARKWAY
DRIVE, SUITE 100
OMAHA, NEBRASKA 68114
(402) 397-2200

HAND DELIVERED and
E-MAILED

Marvin Krout, Director
Lincoln-Lancaster County Planning Department
County-City Building
555 South 10th Street, Suite 213
Lincoln, NE 68508



Re: Change of Zone No. 06018
Our File No.: 24829.49712

Dear Mr. Krout:

My clients, Mike and Lynn Price, have now been able to address paragraph (c) of proposed Section 27.63.770, which language is the subject of concern and a resulting recommendation of denial by staff. Mike and Lynn Price have now been able to resolve the issues that led us to include (c) in our request for the text amendment.

Therefore, we request that you remove the language in (c) and have the Planning Commission consider the language in Amended Exhibit A, attached hereto, as our requested text amendment. This request should not cause any delay as we are removing the language which caused concern to staff and hopefully this application, as amended, can be supported by staff.

If you or your staff has any questions concerning this request, please do not hesitate to contact me.

Very truly yours,

Charles D. Humble

CDH:rjj
Enclosure

**TEXT AMENDMENTS TO
LINCOLN MUNICIPAL CODE**

Amend Section 27.07.040 of the LMC to add a new subparagraph to read as follows:

- (z) Tree service.

Amend Chapter 27.03 of the LMC to add a new section to read as follows:

27.03.631 Tree Service.

Tree service shall mean a building or premises used primarily in support of a business engaged in tree and stump removal, tree and shrub trimming, stump grinding, pin oak injection, insect and disease control, tree nutrients, processing wood chips and firewood, land clearing, the premises may be used for the processing, and storage of tree related products and byproducts produced only by the business located on the premises and the parking of trucks, grinders and related equipment, but no retail sales of products shall be allowed on the premises.

Amend Chapter 27.63 of the LMC to add a new section to read as follows:

27.63.770 Permitted Special Use: Tree Service.

Tree service may be allowed by Special Permit in the AG zoning district under the following conditions:

- (a) Residential uses occupied by owner/caretaker shall be permitted.
- (b) Where a prior special permit has been approved on an undersized lot, the lot may be used for this special permit.
- (c) The City Council may require screening or buffering from adjacent uses.

AMENDED
Exhibit A